

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against-

ANCHOR FOODS, INC., ADVANCED FROZEN
FOODS, INC., ROY TUCCILLO, SR. and
ROY TUCCILLO, JR.,

Defendants.
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FEUERSTEIN, District Judge:

ORDER

18-CR-0522 (SJF)(SIL)

**FILED
CLERK**

3:33 pm, Jan 14, 2021

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

On November 25, 2019, Defendants appeared before Magistrate Judge Steven I. Locke and pled guilty to one count of conspiracy to commit wire fraud in violation of 18 U.S.C. §§371 & 1343.¹ On February 27, 2020, Magistrate Judge Locke held a valuation hearing to determine the amount of the loss or gain resulting from Defendants' criminal conduct in order to determine the appropriate Sentencing Guidelines range under §2B1.1(b)(1). Currently before the Court is Magistrate Judge Locke's Report and Recommendation (the "Report") dated May 10, 2020, *see* DE [47], recommending an addition of twelve (12) offense levels.² In addition to the recommendations, the Report further advised (a) that "[a]ny objections to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days," and (b) that "[f]ailure to file objections within this period waives the right to appeal the District Court's Order." Report at 18 (citations omitted). A copy of the Report was served upon counsel for all parties via ECF on May 10, 2020. Despite such service, no timely objections were filed, nor did

¹Magistrate Judge Locke found the pleas to be knowingly and voluntarily made and recommended that the pleas of guilty be accepted by this Court. *See* Minute Order, Docket Entry ("DE") [30]. That recommendation was adopted, and the pleas accepted, by Orders dated January 8, 2020. *See* Orders [33], [34], [35], [36].

²Although this matter appears to be nondispositive within the meaning of Rule 59 of the Federal Rules of Criminal Procedure, and thus could have been disposed of by Order of the magistrate judge, the Court will address the Report as issued pursuant to Rule 59(b).

any party seek an extension to file objections. For the reasons set forth below, Magistrate Judge Locke's Report is adopted in its entirety.

I. DISCUSSION

A. Standard of Review

Any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen (14) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1); FED. R. CRIM. P. 59(b)(2). Any objection to the magistrate judge's recommendation is entitled to *de novo* review. FED. R. CRIM. P. 59(b)(3). The Court is not, however, required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. *See Thomas v. Arn.*, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985); *United States v. Ballares*, 317 F. App'x 36, 38 (2d Cir. 2008). Indeed, failure to object "waives a party's right to review." FED. R. CRIM. P. 59 (a), (b)(2); *see also United States v. Male Juvenile*, 121 F.3d 34, 38-39 (2d Cir. 1997) ("failure to object timely to a magistrate judge's report may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object."). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); FED. R. CRIM. P. 59 (b); *see generally King v. City of N.Y., Dep't of Corr.*, 419 F. App'x 25, 27 (2d Cir. 2011) (summary order) (noting that the waiver rule is "nonjurisdictional" and, thus, the Court may excuse a violation thereof "in the interests of justice." (internal quotation marks and citation omitted)).

B. Review of the Report

No party has filed objections to the Report.³ Given the absence of objections from the parties, this Court is not obligated to conduct a *de novo* review of the findings and conclusions in the Report and may accept the report without further review. Nonetheless, the Court has undertaken a review of the Report for clear error. After a careful review of the thorough and well-reasoned Report, the Court finds no clear error in either the reasoning or the conclusions reached therein, and accordingly, adopts it in its entirety.

II. CONCLUSION

The Report is adopted in its entirety; an addition of twelve (12) levels will be used to compute Defendants' Sentencing Guidelines range.⁴

SO ORDERED.

/s/ Sandra J. Feuerstein

Sandra J. Feuerstein
United States District Judge

Dated: Central Islip, New York
January 14, 2021

³ On January 13, 2021, counsel for two of the defendants, Roy Tuccillo, Jr., and Advanced Frozen Foods, Inc., filed a letter regarding whether a gain calculation can be used as a basis for determining restitution owed to victims under the Mandatory Victim Restitution Act ("MVRA"), 18 U.S.C. §3663A. Since the Report's recommendation pertains only to application of the Sentencing Guidelines without any reference to the MVRA, the Court does not construe this letter as addressing any recommendation made by the Report.

⁴ As an administrative matter, the Clerk of the Court is directed to terminate motion DE [44] as filed in error as it was not a motion seeking relief but rather a party's post-hearing submission.